



Order 2004-10-4

Served: October 13, 2004

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 9th day of August, 2004

Application of

CAYMAN AIRWAYS LIMITED

for a foreign air carrier permit under
49 U.S.C. § 41301

Docket OST-2003-14296 - 4

ORDER ISSUING AMENDED FOREIGN AIR CARRIER PERMIT

Summary

In this order we are issuing Cayman Airways Limited (Cayman Airways), a foreign air carrier of the Cayman Islands, an amended foreign air carrier permit to engage in scheduled and charter foreign air transportation of persons, property and mail between United Kingdom (Caribbean) points and the United States.¹

Application

By application filed January 16, 2003, as amended, Cayman Airways requests that we renew its existing foreign air carrier permit and amend that permit to enable Cayman Airways to conduct services between United Kingdom (Caribbean) gateway points and the United States, consistent with the provisions of the July 23, 1977, Air Services Agreement between the United States and the United Kingdom of Great Britain and Northern Ireland (the Agreement). The Cayman Islands is a dependency of the United Kingdom and air services between the two countries are governed by the Agreement.

¹ Cayman Airways' existing foreign air carrier permit, issued by Order 87-8-55, authorizes Cayman Airways to engage in scheduled foreign air transportation of persons, property and mail between specified U.K. gateway points in the Caribbean, via named intermediate points, and Miami, Florida, and Houston, Texas, and three additional points in the United States (selected by the United Kingdom); and authority to perform charters subject to 14 CFR Part 212. Cayman Airways also holds exemption authority to conduct scheduled combination services between the Cayman Islands and Chicago (O'Hare) and Boston. See Notices of Action Taken dated August 21, 2003, in Docket OST-2003-15824 for Chicago, and July 21, 2004, in Docket OST-2004-18641, for Boston.

In support of its request, Cayman Airways states that it has been licensed and designated by the Government of the United Kingdom to perform the proposed services; that it is wholly owned and effectively controlled by the government of the Cayman Islands; and that it is operationally and financially fit to perform the proposed services. Cayman Airways further states that it is a major force in the economy of the Cayman Islands with its contribution to tourism and as one of the Island's largest employers.

The Broward County Aviation Department filed an answer in support of Cayman Airways' request.

Decision

We have reviewed the record in this case and have decided to grant the application using simplified Subpart B procedures.² The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.³ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case because there are no material determinative issues of fact requiring other procedures.

We find that grant of this amended foreign air carrier permit is in the public interest, and that Cayman Airways is qualified to conduct the proposed operations.

Public Interest Considerations

The authority sought by Cayman Airways is consistent with the provisions of the Agreement, and reflects post-1987 diplomatic agreements between the United States and the United Kingdom.⁴ Specifically, U.K. Routes 9A (Caribbean Combination Air Services) and 16 (Caribbean All-Cargo Air Services) of the Agreement provide for the services sought by Cayman Airways.⁵

² 14 CFR §§ 302.210 (a)(2) and 302.213.

³ 69 FR 9894, March 2, 2004.

⁴ Footnote 1 of U.K. Route 9A of the Agreement states, in part, that only Cayman Airways (or its successor airline based in the Cayman Islands) can operate on U.K. Route 9A.

⁵ By diplomatic note (No. 49) dated July 8, 2004, the government of the United Kingdom selected Boston, Chicago, Fort Lauderdale, Orlando, and Tampa as U.S. gateway points under Column (C) on U.K. Route 9A in Section 3 of Annex 1 to the Agreement, and designated Cayman Airways to operate scheduled combination services between the U.K. (Caribbean) gateway points and the above (U.S.) points on U.K. Route 9A. The U.K. note further stated that any selection by the United Kingdom authorities of U.S. gateway points "for the purpose of U.K. Route 9A, other than those listed above, is hereby withdrawn."

Operational and Financial Fitness

We find that Cayman Airways is operationally and financially fit to conduct the operations at issue here. Cayman Airways was incorporated in 1968 and was issued an initial foreign air carrier permit by the former Civil Aeronautics Board (CAB) in 1971 to conduct scheduled combination services between the Cayman Islands and Miami (see Order 71-11-100). Cayman Airways has held authority to serve the United States on a continuous basis since that time and is currently authorized to serve seven U.S. cities (Miami, Houston, Boston, Chicago, Fort Lauderdale, Orlando, and Tampa). Cayman Airways' current foreign air carrier permit was issued by Order 87-8-55. Cayman Airways has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years. Cayman Airways has a fleet of B-737 aircraft which it will utilize for its authorized services. Cayman Airways holds effective authority from its homeland to conduct the proposed operations. By memorandum dated March 1, 2004, the Federal Aviation Administration advised us that it knows of no reason why Cayman Airways' request for an amended foreign air carrier permit should not be approved. Finally, we have verified Cayman Airways' compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (aircraft accident liability insurance requirements) and 129 (FAA Operations Specifications).

Cayman Airways provided financial information for the two most recent available calendar years.⁶ As to Cayman Airways' financial fitness, the record before us indicates that historically, Cayman Airways has been dependent on its government to allow it to meet its financial obligations and continue as a going concern. For calendar year 2001, Cayman Airways reported total assets of \$19.1 million, total liabilities of \$41.2 million, and owners' equity of \$(22.1) million. For calendar year 2001, Cayman Airways reported an operating loss of \$10.8 million. For calendar year 2000, Cayman Airways reported total assets of \$30.4, total liabilities of \$38.0, and owners' equity of \$(7.6) million. For calendar year 2000, Cayman Airways reported an operating loss of \$10.9 million. In spite of its current financial condition, we note that the record indicates that the government of the Cayman Islands has indicated that its current policy is to continue to support Cayman Airways for the foreseeable future through annual subsidy, overdraft protection, loan guarantees, and letters of credit. In recognition of Cayman Airways' importance to the Cayman Islands, the government of the Cayman Islands has agreed to provide Cayman Airways with a non-refundable operating investment of \$8.3 million dollars for the current calendar year. Moreover, there is no evidence on the record that Cayman Airways has failed to fulfill its obligations to the traveling and shipping public. As noted above, Cayman Airways has been serving the United States on a continuous basis for over 30 years. Therefore, based on the record before us, we find that Cayman Airways can conduct the proposed services without jeopardizing passenger or shipper funds.

⁶ In a note dated May 26, 2004 (Exhibit CAL 701-1), Cayman Airways' chief financial officer stated that to meet the financial reporting requirements of its sole shareholder, the government of the Cayman Islands, Cayman Airways changed its financial year end date to June 30th. The first reporting period with the new year end, which will cover an eighteen-month period, is June 30, 2003. The applicant states that the audit for the eighteen-month period ending June 30, 2003, has not been completed.

Ownership and Control

For reasons more fully discussed below, we find that Cayman Airways is substantially owned and effectively controlled by homeland nationals.

As noted above, by Order 87-8-55, the Department renewed and amended Cayman Airways' foreign air carrier permit.⁷ The Department, like the CAB before it, concluded that Cayman Airways remained wholly owned by its government, and that overall policy control continued to be substantially vested in citizens of its homeland. However, the Department, like the CAB, noted that, of Cayman Airways' seven-member board of directors, five were citizens of the Cayman Islands and two were non-homeland nationals. In addition, the Department found that of Cayman Airways' seven key management positions, three were held by citizens of the Cayman Islands and four were held by U.S. citizens. The Department found that although there was reason to question whether effective control rested in the hands of citizens of the Cayman Islands, because there was no apparent control by any third country, or any other circumstances that would make grant of the permit authority inimical to U.S. aviation interests, the Department, like the CAB before it, concluded that it was in the public interest to waive its control policy.

Cayman Airways continues to be owned by the Government of the Cayman Islands.⁸ The record also reflects that all of Cayman Airways' board of directors and counsel are citizens of the Cayman Islands. In addition, Cayman Airways' eight-member executive management team consists of four citizens of the Cayman Islands and among the Cayman Islands citizens on the team are the President and Chief Executive Officer.⁹ It is clear that the structure of Cayman Airways' board of directors and key management personnel has evolved since 1987 and that in addition to being wholly owned by homeland nationals, Cayman Airways is now effectively controlled by citizens of the Cayman Islands.

⁷ Earlier, in 1971, the CAB issued Cayman Airways an initial foreign air carrier permit noting that a foreign air carrier of Costa Rica exercised "significant control" over Cayman Airways (see Order 71-11-100). In that Order, the CAB waived its ownership and control policy based on the record at that time. Similarly, in 1978 and again in 1984, the CAB renewed and amended Cayman Airways' foreign air carrier permit (see Orders 78-8-72 and 84-3-51, respectively). In each case, the CAB noted that while Cayman Airways was wholly owned by its government, it also noted the non-homeland citizenship of some of Cayman Airways' key management personnel. In both cases, the CAB concluded that although there did not appear to be any problems associated with the non-Cayman management, to the extent that carrier management control was exercised by the non-homeland citizens, the CAB found it consistent with the public interest to waive its effective control policy.

⁸ By letter dated May 27, 2004, the government of the Cayman Islands' Ministry of Tourism, Environment, Development and Commerce stated that it was the government agency that has ministerial responsibility and is accountable to the country for the national flag carrier, Cayman Airways.

⁹ The remaining four members of the management team include three U.S. citizens and one Canadian citizen.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue an amended foreign air carrier permit to Cayman Airways in the form attached;
2. Cayman Airways is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975, as defined in § 313.4(a)(1) of our Regulations;¹⁰ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, an amended foreign air carrier permit to Cayman Airways authorizing it to engage in scheduled foreign air transportation of persons, property and mail between specified UK gateway points in the Caribbean, via named intermediate points,¹¹ and Houston, Texas, and Miami, Florida and five points to be selected by the United Kingdom;¹²
2. Cayman Airways shall also be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters;
3. The exercise of the privileges granted above is subject to Cayman Airways' compliance with the conditions listed in Attachment A;
4. To the extent not granted, we deny all requests for relief in Docket OST-2003-14296;

¹⁰ This finding is based on the fact that the grant of this permit will not result in a near-term net annual change in aircraft fuel consumption of 10 million gallons or more.

¹¹ By letter dated June 23, 2004, Cayman Airways stated that it would not oppose our excluding Cuba as an authorized intermediate point in the route description of its permit.

¹² As noted above, as of the date of this order, the United Kingdom has selected Boston, Fort Lauderdale, Orlando, Tampa and Chicago as the five U.S. coterminal points available under U.K. Route 9A of the Agreement.

5. Unless disapproved by the President of the United States under § 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for § 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹³ and

6. We will serve a copy of this order on Cayman Airways Limited, Broward County Aviation Department, the Ambassador of the United Kingdom in the United States, the Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration (Miami IFO).

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

¹³ This order was submitted for § 41307 review on August 9, 2004. The 61st day is October 9, 2004. Since the President's designee did not disapprove this order before that date it became effective on October 12, 2004.



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER
(as renewed and amended)

Cayman Airways Limited

A Flag Carrier of the Cayman Islands, British West Indies,
(dependency of the United Kingdom)

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in scheduled foreign air transportation of persons, property and mail as follows:

Between coterminal points in Anguilla, the British Virgin Islands, Cayman Islands, Montserrat, and the Turks and Caicos Islands, intermediate points in Antigua, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guadeloupe, Guyana, Haiti, Jamaica, Martinique, St. Christopher, (St. Kitts & Nevis), St. Lucia, St. Maarten, St. Martin, St. Vincent and the Grenadines, Trinidad and Tobago, any of the coterminal points listed above;¹⁴ and the U.S. coterminal points Miami, Florida; Houston, Texas; and five additional points in the United States.

The holder shall also be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions, and limitations attached, and to the following:

1. The holder may originate or terminate flights at any coterminal point.
2. The five (5) additional coterminal points in the United States may be selected or changed by the United Kingdom upon giving 60 days' prior notice to the United States through diplomatic channels.

¹⁴ Although Cuba is named as an intermediate point under Column B of U.K. Route 9A, reference to Cuba in this permit has been deleted with the written consent of Cayman Airways.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on October 12, 2004. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated by the Government of the United Kingdom (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of the United Kingdom in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the United Kingdom. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the United Kingdom become parties.

The Department of Transportation has executed this permit and affixed its seal on August 9, 2004.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland, except as otherwise provided for in the U.S.-U.K. Air Services Agreement;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.